D.T.E. 02-29-11

Complaint filed by Eugene D'Angelo, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy claiming America's Digital Satellite Telephone switched his regional and long-distance telephone service without authorization.

APPEARANCES: Eugene D'Angelo
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Complainant

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FOR: AMERICA'S DIGITAL SATELLITE TELEPHONE
Respondent

I. INTRODUCTION

On July 3, 2002, Eugene D'Angelo ("Complainant"), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") alleging that his regional and long-distance telecommunications service was switched without authorization to America's Digital Satellite Telephone ("ADST" or "Company").[1] On October 30, 2002, pursuant to notice duly issued, the Department conducted an evidentiary hearing. The Complainant testified on his own behalf. ADST did not contest the Complainant's allegations.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant contends that ADST switched his regional and long-distance telephone service on or about April 14, 2002 (Exhs. Consumer-1; Consumer-2; Tr. at 12). The Complainant submitted his invoices from ADST for long-distance and regional charges incurred from April 3, 2002 through July 2, 2002 (Exh. Consumer-2). The Complainant testified that at no time did he authorize a change in his regional or long-distance telephone service provider (Exh. Consumer-1; Tr. at 13, 30).

The Complainant discovered the alleged slam when his wife received their phone bill for the period April 3, 2002 through May 2, 2002 (Exhs. Consumer-1; Consumer-2; Tr. at 11-13). At this time, on or about May 22, 2002, the Complainant's wife contacted

[1] Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer's primary interexchange carrier or local exchange carrier is known as "slamming."

ADST and was informed that the Complainant had authorized the switch in service, and that ADST had a valid third party verification ("TPV") tape validating the switch in service (Exh. Consumer-1; Tr. at 11-12). The Complainant testified that his wife listened to the TPV, determined that it was not the Complainant, and then contacted him so that he could verify that the voice on the tape was not his (Exh. Consumer-1; Tr. at 12). Following his telephone conversation with ADST, the Complainant contacted Verizon to have his original regional service restored (Tr. at 14, 24, 28, 30).

Additionally, ADST has issued refunds totaling $173.28.[2] These refunds represent a credit to the Complainant for telephone bills received by ADST on the Complainant's June and July, 2002 phone bills (DTE-RR-2). After receiving the $173.28 credit from ADST, the remaining amount in dispute is approximately $34 (Tr. at 25).

B. ADST

ADST did not contest Mr. D'Angelo's contention that the voice and information on the TPV were not his (Tr. at 31). Despite playing the TPV to the customer during settlement negotiations, the Company has never formally responded to the Department's August 21, 2002 request for a copy of the signed letter of agency ("LOA") or TPV, other than to provide the TPV in response to a Department issued record request (Exh. DTE-3; DTE-RR-1). ADST stated that the Complainant had been contacted by Federal Verification ("Federal") of Alfaretta, Georgia (DTE-RR-3). The Company stated that Federal is not a third party verifier licensed to

[2] There are two credits applied on the Complainant's phone bills, one for $39.89 and the other for $133.39 (Exh. Consumer-2; Tr. at 19, 21-22).

do business in the Commonwealth of Massachusetts ("Commonwealth") and that ADST no longer uses Federal for TPV purposes (id.). ADST no longer markets to new customers in Massachusetts (id.).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization through TPV obtained by a company registered with the Department to provide TPV services in the Commonwealth.

Pursuant to G.L. c. 93, § 110(i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts' slamming law set forth above, the Federal Communications Commission ("FCC") implemented new slamming liability rules. Corrected Version First Order on Reconsideration, CC Docket No. 94-129 (May 3, 2000) ("Corrected Order"). In accordance with those rules the company that switches a customer's telephone service without authorization must pay the customer's authorized company a penalty equal to 150 percent of the charges received from the customer. The authorized company is then required to return one third of that amount, or 50 percent of what the customer paid to the unauthorized carrier, to the customer. See 47 C.F.R. § 64.1140. In the Corrected Order the

FCC concluded that states should have primary responsibility for administering their slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) the Department conducted a hearing on October 30, 2002, to determine whether the change in the Complainant's regional and long-distance carrier was authorized. ADST did not contest the Complainant's allegations (Tr. at 31). The Department finds the Complainant's evidence in support of his allegations to be credible. Thus, the Department finds that ADST switched the Complainant's regional and long-distance telecommunications services without authorization.

Having found that ADST initiated this unauthorized switch in the Complainant's regional and long-distance service, and in accordance with the FCC's Corrected Order, the Department directs ADST to pay Verizon, the Complainant's authorized regional service provider, 150 percent of the charges it received from the Complainant within 10 days of this Order. Verizon shall remit one third of that amount, or 50 percent of what the Complainant paid to ADST, to the Complainant. In addition, in accordance with G.L. c. 93, § 112(b), ADST is directed to remit to the Department the amount of three thousand dollars ($3,000.00) as a penalty for the illegal switch of Mr. D'Angelo's regional and long-distance service.[3]

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[3] Pursuant to G.L. c. 93, § 112(b), an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than

(continued…)

Finally, the Department is concerned about the accusations raised in this case regarding the validity of the TPV tape. In accordance with G.L. c. 159, § 12E and G.L. c. 93, § 109, all TPV service providers shall be registered with the Department, which has the authority to protect consumers against "incorrect, inaccurate or falsified verification." Third party verifiers have an obligation to ensure that tampering and falsifying of data do not occur. Therefore, the Department will continue to review the TPV provided in this case to determine if an investigation into the TPV service provider's business practices are warranted.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that America's Digital Satellite Telephone switched Eugene D'Angelo's regional and long-distance telephone service provider without authorization in violation of the provisions of Massachusetts G.L. c. 93, § 109 (a), it is hereby

ORDERED: That America's Digital Satellite Telephone shall comply with the directives contained in this order; and it is

[3](…continued)
once in a 12-month period, shall be subject to a civil penalty not to exceed $1,000 for the first offense and not less than $2,000 for any subsequent offense. Prior switching violations for the 12-month period in question have been assessed against ADST in Dion v. ADST, D.T.E. 02-29-8 (2002) and Donnelly v. ADST, D.T.E. 02-29-9 (2002). Moreover, an IXC determined by the Department to have intentionally, maliciously, or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b).

FURTHER ORDERED: That America's Digital Satellite Telephone shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds and credits made to Verizon.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).